***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NO.19774 of 2006

%14-12-2006

Pesala Anudeep, being minor
represented by his mother
Smt.P.Siva Rama Laxmi Kumari. … PETITIONER

VERSUS

$The Panchayat Secretary Gram
Panchayat, Pamuru, Prakasam
District and another. … RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner**:** Sri T.V.Ramana Rao.

^Counsel for Respondent No.1: Sri M.Prabhakar Rao.
^Counsel for Respondent No.2:G.P.for Home.

? Cases referred
-NIL-

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.19774 of 2006

DATED 14.12.2006

Between:
Pesala Anudeep, being minor

represented by his mother
Smt.P.Siva Rama Laxmi Kumari. … PETITIONER

versus

The Panchayat Secretary Gram
Panchayat, Pamuru, Prakasam
District and another. … RESPONDENTS

WRIT PETITION NO.19774 of 2006

ORDER:

Heard Sri T.V.Ramana Rao, learned counsel representing the writ petitioner and Sri M.Prabhakar Rao, learned counsel representing the 1st respondent.

2. Pesala Anudeep, being minor represented by his mother Smt.P.Siva Rama Laxmi Kumari, filed the present Writ Petition praying for setting aside the proceedings in ROC No.53/2006, dated 8.10.2006 as illegal, arbitrary and unjust and direct the 1st respondent to forthwith consider the application for building permission in accordance with the lay out and Building Rules and pass such other suitable orders.

3. Sri Ramana Rao, learned counsel representing the writ petitioner had pointed out to the averments made in the affidavit filed in support of the Writ Petition and also the stand taken in the counter affidavit and would submit that merely because there is some dispute relating to the recovery of money, it cannot be taken as a dispute relating to the title to the property and in view of the same the very rejection of the building plan approval cannot be sustained.

4. On the contrary, Sri M.Prabhakar Rao, learned counsel representing the 1st respondent would contend that on the strength of the legal opinion inasmuch as it was stated that the title is in controversy, the building permission was rightly rejected and hence

the Writ Petition be dismissed.

5. The mother of the petitioner had sworn to the affidavit filed in support of the Writ Petition. It is stated that the petitioner is the absolute owner and possessor of H.No.4/159 and 160 by virtue of registered Gift Deed executed by the father-in-law of the petitioner's mother on 15.3.2004. As the house was in a dilapidated condition, she applied for building permission in the Gram Panchayat, Pamuru on 8.6.2006 by registered post. However, the same was returned unserved with an endorsement that no such addressee of Executive Officer was present at Pamuru Gram Panchayat. Again she send the building plan to the 1st respondent on 15.6.2006 by way of registered post, but the 1st respondent refused to receive the cover and the same was returned by the postal authorities with an endorsement that the 1st respondent refused to receive the same. Copy of the said cover with endorsement is filed along with the Writ Petition. Thereafter, the petitioner's mother lodged a complaint with the Grievance Cell at the office of the District Collector, Ongole on 14.8.2006. Pursuant to her complaint, the District Panchayat Officer, by Memo in ROC No.2772/2006/A6, dated 25.8.2006 directed the 1st respondent to explain the reasons for refusing to receive the building plan submitted by the petitioner's mother. The copy of the letter dated 25.8.2006 is also filed along with the Writ Petition. It is stated that thereafter the petitioner's father went to the office of the 1st respondent and submitted the building plan on 23.8.2006 to the 1st respondent in the presence of office clerk and bill collector. In spite of the receipt of the building plan, the 1st respondent neither rejected nor approved the building plan submitted by her. It is also stated that the Government of Andhra Pradesh framed A.P. Gram Panchayat Land Development (lay

our and building) Rules, 2002. Rule 14 of the said Rules deals with filing of applications for permission to construct building accompanying the site plan. Rule 26 of the said Rules stipulates that the executive authority may sanction the plan with or without modification or refuse the same within a period of 15 days in case of individual residential buildings. Rule 26 also stipulates that where no orders are communicated by the authority either sanctioning or refusing of the permission, it shall be deemed to have been permitted the proposed permission and the owner may go ahead with the work. It is also stated that Section 2(12) of A.P. Panchayat Raj Act, 1984 states that the executive authority means Panchayat Secretary appointed to each Gram Panchayat. It is also further stated that the petitioner had not received any communication from the 1st respondent on the plan submitted by the mother of the petitioner and therefore she started making preparation to start construction of building strictly as per the building plan submitted by her to the 1st respondent. While so, on 4.9.2006, the staff working in the office of the 1st respondent came to our premises and informed them that the 1st respondent directed them to stop the construction activity to be undertaken by her. On the same day the 2nd respondent called her husband to the Police Station and directed him to stop the construction activity. As there was no response from any authority, she sent legal notice to the respondents on 8.9.2006. In the said notice the petitioner's mother had categorically stated that she is entitled to proceed with the construction as per the deemed provision under Rule 26 of Layout and Building Rules, 2002 and requested the respondents not to interfere with the work of construction. The copy of the legal notice dated 8.9.2006 is filed along with the Writ Petition. As no reply was forthcoming to the

said notice or no orders had been passed on her application for building permission, she started preparations to construct the building strictly in accordance with the building plan. Again the clerk working in the office of the 1st respondent came to the site and informed her that she shall not make any construction without approved building permission. It is also stated that the petitioner's mother had procured material for construction of the building by investing huge amounts and it is lying at the site. It is further stated that there was no justification on the part of the 1st respondent in not disposing of her application for construction of building and in not permitting to make construction under the provisions of Rule 22 of Layout and Building Rules, 2002. The 1st respondent, who is the executive authority of the Gram Panchayat, is bound to act in accordance with law.

6. The impugned order is in Telugu and the translated version of the same reads as hereunder:

> "In the above reference representation for building permission along with building permission in site bearing D.No.4-159 and 4-160 is given by you on 21.9.2006. Gift Deed relating to the said site is annexed to your representation. On perusal of your representation, the name of Sri Pesala Madhusudhana Rao is shown as owner of the house site in the Panchayat records. But according to the title deed produced by you, it is understood that one Sri Pesala Pullaiah has gifted the said site to his grand son Sri Pesala Anudeep whose guardian is Smt. Siva Rama Laxmi Kumari. So the title of the site for which you applied for building permission is in dispute. Also on perusal of the above reference No.2 which is the lawyer notice on behalf of Sri Nallapati Veeranjaneyulu, there is a decree obtained in OS No.2351/2003 on the above site and also another suit OP No.109/2006 is also filed, that they are having right over the site and if any one applies for building

permission in that site, it is alleged that such application shall be rejected.

When the application for building permission of Siva Rama Laxmi Kumari, guardian of Sri Pesala Anudeed is brought to the notice of the Panchayat, it passed a Resolution No.5(1) dated 11.9.2006 for obtaining legal opinion as the rights of the site are in dispute. You are hereby informed that through the legal opinion given by AGP., Kanigiri, as the ownership of the site in which you sought for building permission is in dispute, as the matter relating to that site is pending in a Court of law, it is hereby informed that it is not possible to approve the building plan and sending back the building plan and gift document. After it is confirmed who is the owner of the site, upon application from such person it will be verified.

Sd/xxx
(G.Ramaiah) i/c.8.10.06
Panchayat Secretary,
Pamur G.P.
Prakasam District".

7. In paragraph 2 of the counter affidavit filed by the 1st respondent it is stated that the house site property situated in door No.4/159 & 160 of Pamuru village is in serious civil dispute and the ownership of the same is a subject matter of the execution petition No.109/2006 on the file of the civil Court, Kanigiri. Apart from that, as per the Gram Panchayat records, one Madhusudhana Rao is the actual owner of the said property and he is paying the house tax since 1986 onwards and his name is not changed in the records. It is stated that a legal notice was also received from one Veeranjaneyulu stating that he obtained a decree against Madhusudhana Rao in OS No.2351/2003 and by virtue of the said decree, he became the absolute owner of the said property and no building applications can be entertained over the subject property. In view of the same, it is stated that the application submitted

by the writ petitioner claiming to be the owner of the property was placed before the Gram Panchayat for consideration. In view of the existing civil cases and the dispute with regard to the title of the property, the Gram Panchayat sought for legal opinion and after obtaining legal opinion from the concerned Assistant Government Pleader, the plans were returned to the writ petitioner with an endorsement dated 21.9.2006. It is further stated that the ownership of the house site property is in dispute and as per the legal notice of Veeranjanayulu, the property is sought to be transferred on his name by a competent civil Court, and therefore it is not correct to say that the writ petitioner is the absolute owner and possessor of the property. It is also stated that it is a fact that the writ petitioner submitted a building plan along with the gift deed, but, in view of the legal notice of Veeranjaneyulu and as per the entries in the Gram Panchayat records, the matter was placed before the Gram Panchayat for its decision and obtaining the legal opinion, the Gram Panchayat decided to reject the building plan on the ground that the title of the property is in dispute and as the same is the subject matter of E.P.No.109/2006.

8. It is needless to say that the Gram Panchayat records show the name of the husband of Smt. Siva Rama Laxmi Kumari. The mere fact that one Veeranjaneyulu obtaining a money decree as against the said person, by that itself it cannot be said that the said Veeranjaneyulu became the owner of the property. It is also needless to say that unless further steps are followed and unless in a court auction the property is sold and the same is confirmed in accordance with law and Sale Certificate is obtained, it cannot be said that by mere fact a money decree is obtained or a money suit is filed, it can be said that it would amount to a title dispute.

9. An attempt is made by the learned Standing Counsel that there

is an alternative remedy by way of appeal. In the light of the reasons recorded in the impugned order, this Court is thoroughly satisfied that the rejection on the ground that the mere money decree would amount to a title dispute between the parties is totally an unsustainable reason. Hence, the impugned order of rejection is hereby set aside and the matter is remitted to the 1st respondent to reconsider the application for granting of building plan in relation to the subject matter of the Writ Petition in accordance with law.

10. However, it is now brought to the notice of this Court that the District Panchayat Officer, Ongole by endorsement No.2772/2005(Panchayat)/A6, dated 27.10.2006 had treated the application for building permission as deemed approval and issued suitable directions to permit the petitioner to further proceed with the construction. In the light of the same, the 1st respondent to take into consideration the said endorsement also and till appropriate orders are made by the 1st respondent in this regard, the 1st respondent not to further interfere with the further activity of the petitioner in relation to the subject matter of the Writ Petition. This exercise to be completed as expeditiously as possible and at an early date in view of the peculiar facts and circumstances.

11. With the above direction, the Writ Petition is disposed of. No costs.

14.12.2006

SSR